News Notes

of the Central Committee for Conscientious Objectors

Court divides on right to full hearing

Gonzales conviction upheld

By a five to four decision the U. S. Supreme Court on June 27 upheld the conviction of Raymond Gonzales Jr., Boulder, Colorado, Jehovah's witness, for refusing induction into the Army in 1957. Gonzales, sentenced to 15 months imprisonment by the District Court, appealed, claiming that he had been denied adequate opportunity to answer facts contained in a "false memorandum" inserted in his file by his draft board. He also claimed he had been denied due process by the exclusion from his file of the Hearing Officer's recommendations; and that he was further denied a full and fair hearing in the District Court when it refused to order the admission of the full FBI report into the trial.

The majority opinion, written by Justice Tom Clark, former U. S. Attorney General, ruled that the opportunity to make a written rebuttal of the Department of Justice recommendation to the State Appeal Board comprised an adequate and fair hearing.

The court further held that the draft law did not require the Government to make available to the registrant a copy of the Hearing Officer's recommendation. Such reports were viewed by the Court as memorandums to the Attorney General—not as recommendations of the Department of Justice. The Court also stated that to require the production of the full FBI reports in the District Courts, and not to require their production before the appeal boards, would be "an act of folly."

In pursuing his CO claim Gonzales appeared before a Hearing Officer who adjudged him sincere and conscientiously opposed to combatant duty, and recommended that he be classified I-A-O (available for noncombatant military duty). The Department of Justice rejected the Hearing Officer's finding and recommended that Gonzales' claim as a conscientious objector be denied. It found that Gonzales' claim as to the monthly hours of his religious activities was so highly exaggerated "as to cast doubt upon his veracity and consequently, upon his sincerity and good faith."

In reaching its decision the Justice Department relied upon a local board summary of an interview with Gonzales in 1956 in which it reported Gonzales as claiming 100 hours a month devoted to religious duties. The record shows that the summary of the local board was in the identical words of a letter to this effect filed by Gonzales four years before. Gonzales denied that the board asked him any such questions during the five-minute hearing accorded him.

The record further showed that the Hearing Officer never questioned Gonzales on the claim of hours spent in religious work. Gonzales claimed that he was not even aware of the existence of the local board's summary until he received a copy of the Justice Department recommendation. He promptly entered a written denial of the charge in his rebuttal to the State Appeal Board.

A miscarriage of justice

The minority opinion, written by Chief Justice Warren and joined in by Justices Black, Brennan, and Douglas, held that Gonzales had been deprived of the right to a full hearing as guaranteed by statute and regulation. "The facts of this case," said the minority, "not only indicate a miscarriage of justice, but also underline the significance of the hearing rights which petitioner was never accorded."

In reviewing the facts of the case and Gonzales' established excellent character, the minority felt that his denial of misrepresenting his religious duties had "the ring of truth."

"The striking thing about this case—aside from the dishonoring of petitioner's claim," stated Chief Justice Warren, "is that he never once received a real opportunity to persuade any Department (of Justice) or selective service officer face-to-face that he had not lied to the local board, for the accusation was never made until petitioner's opportunity for oral response had passed. The Hearing Officer never adverted to the matter and the Department's recommendation was made on grounds entirely different from the matters which had been explored at the hearing."

The minority opinion held that since the issue was one of credibility it could not be maintained that the opportunity to file a written rebuttal afforded Gonzales a fair opportunity to meet the accusation. Nor was it the intent of Congress in requiring a hearing on CO claims that a "guessing contest would suffice."

Finally, the minority opinion held that the Court's decision could not be reconciled with precedent and quoted from *Morgan v. U. S. (304 U. S. 1)* that "the right to

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a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right might be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command." The minority held that the claim of Gonzales to a full hearing "is no less worthy of consideration than the rights of the stockyards commission men in the Morgan case."

A petition for rehearing has been filed by Hayden C. Covington of Brooklyn, New York, attorney for Gonzales.

New discharge policy aids COs

Conscientious objectors in the U. S. Army Reserve may now apply for discharge on grounds of conscientious objection to all military duty. Revised discharge regulations, approved June 6, delegates authority to commanders of most Reserve units to discharge enlisted personnel "when it is reported by Selective Service authorities that the reservist is found to be a bona fide conscientious objector and if not classified I-D (as a member of a Reserve component), would be classified I-O (Conscientious Objector Available for Civilian Work Contributing to the Maintenance of the National Health, Safety, or Interest)." (Army Regulation 140-178, paragraph 4n(3))

Provision by the Department of the Army for discharge from the Army Reserves on the grounds of conscientious objection marks the first time that the armed forces have given formal recognition to conscientious objection as a specific ground for discharge. Repeated requests for a specific regulation to this effect have met with continued refusals. The Department of Defense has maintained that conscientious objectors on active duty in the armed forces should apply for discharge "for convenience of the government" and that each individual case would be given full consideration. While many COs have been honorably discharged others have been discharged with less than honorable discharges. Enlisted men in the Army often have a difficult time securing discharge as unit commanders often are unaware that a CO can apply for discharge for convenience of the government.

Men who became conscientious objectors while serving out their Army Reserve obligation seldom were granted discharges. If they were members of a Ready Reserve unit obligated to report for regular drill periods, the most they could expect was a transfer to the Standby Reserve. As members of the Standby Reserve they were not obligated to perform any duty and could not be called back to active duty in time of national emergency unless they have been found available by action of the draft board.

Inquiries at National Selective Service headquarters reveal that no Selective Service regulations or directives have been drawn up to carry out Selective Service's responsibility. Further information is expected in the months ahead.

DeVries gets I-O, is discharged

CCCO knows of one Army Reservist who already has been discharged under this new provision. William J. DeVries, Chicago, was granted an honorable discharge on grounds of conscientious objection on July 21. DeVries enlisted in the Illinois National Guard and after serving a three-year term, resigned, and declined to re-enlist. Before he was discharged from the Guard he filed a CO claim with his draft board. He was given a I-O (conscientious objector) classification by his board. When DeVries was released from the Guard he was informed that the discharge did not release him from his Reserve obligation. He informed Reserve authorities that as a CO he could not perform any military duty. His draft board reclassified him I-A, but in March, 1960 the State Appeal Board classified him I-O again. He was then transferred from the Ready Reserves to the Standby Reserves and shortly afterward was honorably discharged.

CCCO's new memorandum "The CO in the Reserves" includes specific suggestions to COs seeking discharge from the Reserves. Copies available upon request.

Reprints available

Free reprints of the article on the adjacent page are available to all to distribute to men of draft age. We are impressed with the steady stream of young men who have conscientious objection to war but doubt that their views come within the provisions of the draft law. *Are You a Conscientious Objector to War?* may help many of these men to a decision to take a CO stand. The statement is based on the draft law, regulations, countless CO cases assisted by CCCO, and the few court decisions bearing on the question. Order from CCCO.

Can a CO serve the state he has refused to defend in force and violence, even as a forester or public health officer? In the last analysis, the state belongs to those who are prepared to fight for it. It originated in robbery and violence, and became an institution in the development of a special fighting and ruling class. The democratization of the state changed nothing, excepting to include every physically fit male in the class of fighter-rulers.—Joseph Schneider

Are you a conscientious objector to war?

Introduction

You may be one of the many young men of draft age who have serious objections to war. Are you aware of the provisions in the draft law for conscientious objectors? Or are you questioning whether your particular basis of objection to war is covered by the law? The following paragraphs may be helpful to you.

The present draft law provides that no person shall

> be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. *(Section 6j of the Universal Military Training and Service Act of 1951, as amended)*

The conscientious objector who is opposed only to combatant duty will, if his claim is sustained by his draft board, be assigned to noncombatant military duty, usually in the Army medical service. If found opposed to combatant and noncombatant duty, he will be ordered to perform civilian work of national importance.

Religious Training and Belief Defined

Religious training and belief should be viewed as a single concept with emphasis clearly upon belief. A federal court has held that "so far as Congress was thinking of training, it regarded it as meaning no more than individual experience supporting belief; a mere background against which sincerity could be tested." Religious training and belief includes any belief, orthodox or unorthodox. It does not have to include fear of religious sanctions, such as punishment after death or excommunication from the church. Beliefs which are religious at their root are covered by the law.

The draft law definition of religious training and belief does not require you to be a member of any church or religious organization, nor to adhere to any formal creed. Formal religious training, such as received in Sunday School, is not required by the law, although evidence of such may strengthen your claim.

The Supreme Being Clause

The requirement of "a belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" may present the greatest difficulty for some. Yet the legal definition of Supreme Being may be broad enough to include your particular belief. You do not have to believe in a Supreme Being in some anthropomorphic sense of a personality having corporeal existence. Supreme Being is synonymous with *God* or *Diety;* it may be thought of as *Love*, or *Truth*, or the *Integrative Force of the Universe*, or you may call it something else.

While Selective Service and the Department of Justice often apply the narrowest interpretation possible to the meaning of Supreme Being, there is no reason to consider the concept of Supreme Being as restrictive to some particular theological definition of God. Any person who believes in God or a Supreme Diety by some other terminology can legally claim belief in a Supreme Being.

Who Should Apply

If your objection to war rests on long-established and conventional religious beliefs which include belief in a Supreme Being, you should apply for classification as a conscientious objector.

If you hold liberal, questioning, or more unorthodox views on religion, you should apply for a CO classification. If you cannot conscientiously answer *yes* to the Supreme Being clause, answer with a *I don't know* or *Depends upon what you mean*, or leave it blank. Then follow with a clear, simple statement of what you do believe. If you answer *no* to the Supreme Being question, you will be denied the special appeal procedure available to CO claimants.

If you consider your objection to war as "non-religious" in nature, or if you absolutely do not believe in any concept of a Supreme Being, you should file the special CO form, and put into your draft record the basis of your objection to war.

Only you can decide whether you are an objector to war, and the basis of your objection. But let Selective Service determine whether your particular belief comes within the draft law provisions for conscientious objectors. Some draft boards are quite liberal in their interpretations. *Do not assume that you do not qualify.*

Further Information

Write the Central Committee for Conscientious Objectors, 2006 Walnut Street, Philadelphia 3, Pennsylvania for further information about the CO provisions in the draft law. CCCO was established in 1948 as a nonsectarian counseling service available to all COs regardless of the basis of their objection to war.

CCCO publishes the HANDBOOK FOR CONSCIENTIOUS OBJECTORS, a thorough treatment of CO problems in relation to the draft law. Includes helpful chapters on thinking through the basis for conscientious objection; the CO in the armed forces; and the CO in prison. Also includes a select and annotated bibliography on conscientious objection. (Fourth Revised Edition, 1960, 50 cents)

Briefly noted

Brent Barksdale, CO performing civilian work with the Philadelphia Friends Social Order Committee, was killed instantly when a tractor which he was driving overturned on him. The accident occurred August 9 near Lame Deer, Montana where Brent was serving as boys counselor in an American Friends Service Committee high school work camp. Barksdale, whose home is in Los Angeles, was a graduate of Stanford University. He was discharged from the Marine Corps Reserve last year, and shortly after was given a CO classification by his draft board. Barksdale had another year of civilian work to perform.

Doctors, dentists, and other medical personnel with the I-O classification who are ordered to report for pre-induction physical examinations are not to be asked by examining officials to fill out the Armed Forces Security Questionnaire (DD Form 98). The amendment to Army Regulations was necessary to clarify pre-induction procedures relating to medical personnel. All other men with I-O classifications at the time they are ordered to report for pre-induction physicals are reminded that they are not supposed to be tendered the security questionnaire, and that they are within their rights in refusing to execute the form.

T. Y. Rogers Jr., a recent graduate of Crozer Seminary, Chester, Pennsylvania, and a former resident of Montgomery, Alabama, is CCCO's new administrative assistant. He succeeded Millard Hunt who accepted appointment as executive secretary of the Pennsylvania Council to Eliminate the Penalty of Death. Rogers is also serving parttime as local secretary for the Fellowship of Reconciliation.

Arthur Cope Emlen Jr., San Luis Obispo, California, and *Nathan M. Auerback,* Old Bridge, New Jersey, were pardoned by President Eisenhower on July 17. Both had served prison sentences for violation of the draft law.

The Court Reporter

Prosecutions

(None since last issue)

Released from prison

6-28-60 Joe S. Bonntrager (On parole)

Currently imprisoned

Allenwood, Pa.—Levi L. Hershberger, Eli J. Miller, Jacob Weaver Nolt

Danbury, Conn.—William W. Hart, Jr.

Sandstone, Minn.—Robert E. McGrath

Tallahassee, Fla.—Hubert Dexine Sprinkle

Total number of COs convicted of Selective Service violations since 1948 to date, 353. This is a minimum number; Jehovah's witnesses and Muslims are not included, and we miss a few.

Discrimination denied

The U. S. Civil Service Commission in San Francisco denied that Oral Balzer, CO from Fresno, California, had been disqualified for a civil service appointment because he was a conscientious objector to war. (See NEWS NOTES, July, 1960).

Balzer had applied for a position in the Internal Revenue Service in Fresno and was rated at the top of the eligible list. He was later informed by a Government personnel officer in Fresno that his appointment could not be approved because his release from two years of civilian work as a CO during World War 2 did not specify that it was an honorable discharge.

Civil Service officials stated that the Fresno personnel officer had misrepresented the facts when notifying Balzer that he did not qualify. At a recent meeting with Civil Service officials Balzer was completely satisfied that he was not denied appointment because of his CO views.

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